

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PEKKA LONKA  
and MIKAEL KONTKANEN

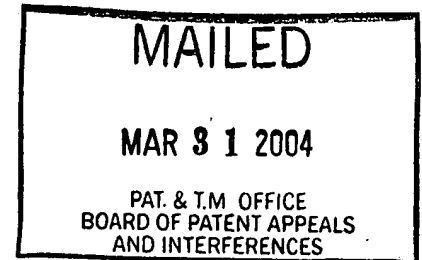
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Appeal No. 2004-0966  
Application No. 09/268,080

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ON BRIEF

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Before WALTZ, DELMENDO and JEFFREY T. SMITH, *Administrative Patent Judges*.  
JEFFREY T. SMITH, *Administrative Patent Judge*.

***DECISION ON APPEAL***

Applicants appeal the decision of the Primary Examiner finally rejecting claims 2 to 5, 13 and 15 to 19.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 134.<sup>2</sup>

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<sup>1</sup> The subject matter of claims 6 to 12 has been indicated as containing allowable subject matter. (See Brief, page 1; Answer, page 6).

<sup>2</sup> In rendering this decision, we have considered Appellants' arguments presented in the Brief filed July 3, 2002.

### ***BACKGROUND***

Appellants' invention relates to a telescopically expanding telephone. According to the Appellants, the present invention enables the use of a large display and keyboard in a small mobile phone. (Brief, p. 5). Claim 18, which is representative of the claimed invention, appears below:

18. A telephone comprising a first part; a second part attached to the first part movable between a first position and a second position; a radio transceiver in the first part and an antenna coupled thereto; and in the second part, a keyboard for providing control input information to the radio transceiver, and an arrangement for attaching a battery to the second part parallel to the keyboard and additionally comprising in the second part a grip design for allowing a user to hold the telephone by the second part.

### ***CITED PRIOR ART***

As evidence of unpatentability, the Examiner relies on the following prior art:

Reber et al. (Reber) (filed April 14, 1997)	6,002,946	Dec. 14, 1999
Murray et al. (Murray) (filed October 15, 1997)	6,011,699	Jan. 04, 2000

Appellants' admitted prior art, figure 4

### ***THE REJECTIONS***

The Examiner entered the following rejections:<sup>3</sup>

Claims 3 to 5, 13 and 15 to 19 as unpatentable under 35 U.S.C. § 103(a) as obvious over the combination of Murray and Reber; and claim 2 under 35 U.S.C. § 103(a) as obvious over the combination of Murray, Reber and Appellants' admitted prior art, figure 4 (Answer, pp. 4-6).

Appellants have indicated (Brief, page 3) that, for the purposes of this appeal, claims 2 to 5, 13 and 15 to 19 do not stand or fall together. We will consider the claims separately only to the extent that separate arguments are of record in this appeal. 37 CFR § 1.192 (c)(7)(2001).

We have carefully reviewed the claims, specification and applied prior art, including all of the arguments advanced by both the Examiner and Appellants in support of their respective positions. This review leads us to conclude that the Examiner's § 103 rejection is well founded. *See In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1471-1472, 223 USPQ 785, 787-788 (Fed. Cir.

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<sup>3</sup>The Examiner has withdrawn the rejection of claims 6 and 7 under 35 U.S.C. § 103(a) over the combination of Murray, Reber and Appellants' admitted prior art, figure 4. (Answer, p. 6).

1984). Accordingly, we will sustain the Examiner's rejections for essentially those reasons expressed in the answer, and we add the following primarily for emphasis.

Rather than reiterate the respective positions advanced by the Examiner and Appellants, we refer to the Examiner's Answer and to Appellants' Brief for a complete exposition thereof.

Appellants have not specifically addressed the Examiner's reasons for finding motivation to combine the teachings of the Murray and Reber references. Rather, Appellants argue that in the claimed invention the location of the battery is significant and cannot be ignored. (Brief, p. 11). Appellants also argue that the Examiner's rejection is based on improper hindsight. (Brief, pp. 11-18).

Appellants' arguments are not persuasive. According to the Examiner, Murray differs from the claimed invention in that the transceiver is located in the second part. However, as disclosed by Reber, a person of ordinary skill in the art would have recognized that the transceiver could be located in the first part or second part. (Answer, p. 4). It is well settled that the prior art references stand for all of the specific teachings thereof as well as the inferences one of ordinary skill in this art would have reasonably been expected to draw therefrom, see *In re Fritch*, 972 F.2d 1260, 1264-65, 23 USPQ2d 1780, 1782-83 (Fed. Cir. 1992); *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). The

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Examiner cited Murray figure 7 for teaching the location of a battery that is parallel to the keyboard. (Answer, p. 4).

Appellants argue that Murray and Reber were not confronted with the same problem as Appellants. Specifically, Appellants state that they were “concerned with resolving issues directly and specifically related to the location of the various elements on mobile phones.” (Brief, p. 16). Appellants’ argument is not consistent with their discussion of the Murray and Reber references on pages 9 and 12 of the Brief. Specifically, Appellants recognize that the Murray and Reber references discuss the location of various elements in hand held devices. Thus, we are not persuaded by Appellants’ argument.

The Examiner rejected claim 2 under 35 U.S.C. § 103(a) over the combination of Murray, Reber and Appellants’ admitted prior art, figure 4. According to the Examiner the cited prior art would have rendered the use of a quick action keyboard obvious. In response to this rejection the Appellants identify the features of claims 2, and assert that the claim is patentable for the same reasons as argued for claim 18. (Brief, p. 18). We do not find Appellants’ response persuasive. The Examiner has presented factual determinations regarding the use of quick action keyboards. These determinations seem reasonable. Since Appellants have failed to challenge the factual determinations, we presume that they are in agreement with the Examiner. Thus, for the reasons presented above regarding claim 18

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and the reasons presented by the Examiner we will uphold the rejection.

Appellants have asserted the subject matter of claims 3 to 5, 13, 15 to 17 and 19 are separately patentable for the reasons presented on pages 18 to 23 of the Brief. We note that the Examiner has addressed the limitation of these claims in the Answer and Appellants have failed to refute the Examiner's position in supplemental briefing. However, we do not find that Appellants' statements that merely point out differences in what the claims cover an argument as to why the claims are separately patentable. See 37 CFR § 1.192 (c)(7).

Appellants have not presented reasons that are different from those provided for claim 18. Thus, for the reasons stated above and in the Answer, we affirm the rejection of claims 3 to 5, 13, 15 to 17 and 19.

### ***CONCLUSION***

For the foregoing reasons and those set forth in the Answer, based on the totality of the record, we affirm the Examiner's rejections of claims 2 to 5, 13 and 15 to 19 as unpatentable under 35 U.S.C. § 103(a).


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## Time for taking action

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED**

Thomas A. Waltz  
THOMAS A. WALTZ  
*Administrative Patent Judge*

  
ROMULO H. DELMENDO  
*Administrative Patent Judge*

  
JEFFREY T. SMITH  
*Administrative Patent Judge*

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